

35. Seven of the patents at issue here are also at issue in the Palm Action. All the patents at issue here are also at issue in each of the actions filed against T-Mobile, Verizon, AT&T, Sprint, and Alltel.

36. The related actions were stayed pending completion of the PTO reexamination proceedings.

### 3. 67 Claims Already Confirmed/Allowed After Reexamination.

37. After the jury verdict in the RIM action, the United States Patent and Trademark Office ("PTO") initiated reexamination of the '670, '172, '451, '592, '472 and '946 Patents in December 2002, and granted RIM's petitions for reexamination of the '960 and '611 Patents in April 2003 and September 2003 respectively. RIM subsequently filed requests for reexamination of the other patents-in-suit.

38. All of the reexaminations eventually were terminated or went to appeal. The Appeals Board has rendered decisions for each of the reexaminations. The Board had confirmed or allowed 67 of NTP's patent claims after reexamination. The following chart summarizes the Board's appeal decisions of the reexaminations of the patents-in-suit:

| Patent No. | Reexam No. | Status           | Claims Confirmed/Allowed by the Board  |
|------------|------------|------------------|--|
| 5,436,960  | 90/006,533 | Affirmed in part | 4, 6, 11, 15, 17, 21, 23, 28, 32, 34, 38, 40, 45, 49, 51, 55, 57, 62, 67, 79 |
|            | 90/006,675 |                  |  |
|            | 90/007,731 |                  |  |
| 5,438,611  | 90/006,676 | Affirmed         |  |
| 5,479,472  | 90/006,677 | Affirmed in part | 10, 12, 14, 16, 18, 20, 29, 31, 33, 35, 37                                   |
| 5,625,670  | 90/006,491 | Affirmed in part | 567-570  |
|            | 90/006,678 |                  |  |
|            | 90/007,723 |                  |  |
| 5,631,946  | 90/006,492 | Affirmed in part | 289, 296-305, 307-309, 314-329, 333  |
|            | 90/006,679 |                  |  |

|           |            |          |  |
|-----------|------------|----------|--|
| 5,819,172 | 90/006,493 | Affirmed |  |
|           | 90/006,680 |          |  |
|           | 90/007,735 |          |  |
| 6,067,451 | 90/006,494 | Affirmed |  |
|           | 90/006,681 |          |  |
|           | 90/007,726 |          |  |
| 6,317,592 | 90/006,495 | Affirmed |  |

39. After years of reexamination proceedings, the validity of claims 15, 32, and 34 of the '960 patent, which RIM was found to infringe at trial, have been upheld.

40. NTP has appealed the Board's decisions to the United States Court of Appeals for the Federal Circuit, as to all of NTP's patent claims that the Board did not already confirm. The appeal is pending.

**E. Defendant's Infringement and Notice Thereof**

41. Defendant has been, currently is, and continues to infringe one or more claims of the patents-in-suit by including making, using, selling, offering to sell, and/or importing into the United States one or more services and products that infringe the patents-in-suit or that are specially adapted for use in infringing products. For example, Microsoft (1) makes infringing devices that are imported into the Richmond Division, offered for sale and sold to customers in the Richmond Division for use in the Richmond Division; (2) directly markets infringing devices to customers, including customers in the Richmond Division, via the Defendant's online Web sites, including, but not limited, to <http://www.microsoft.com/windowsmobile/en-us/default.aspx>; (3) knowingly communicates with customers and provides instructions, support and services including customers located in the Richmond Division, through telephone and online contacts for technical support of the infringing use of products and services sold by the Defendant through Defendant's online Web sites, including, but not limited to,